

(2012) 05 DEL CK 0607
In the Delhi High Court
Case No : Writ Petition (C) 8052 of 2009

Sri. T.M. Sampath

APPELLANT

Vs

The Director General, National Water Development Agency
and Others

RESPONDENT

Date of Decision : 03-05-2012

Acts Referred:

Citation : (2012) 190 DLT 302

Hon'ble Judges : V.K. Jain, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : R.V. Sinha and Mr. A.S. Singh, for the Respondent

Judgement

V.K. Jain, J.—This writ petition is directed against the order dated 25.3.2008 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the Tribunal), whereby TA No. 163/2007 filed by the petitioner was dismissed. The petitioner joined National Water Development Agency (NWDA) as Stenographer Grade II in the pay scale of Rs.425-800 (pre-revised) on 10.5.1984. This was also the pay scale applicable to Steno Grade "C" in Central Secretariat Stenographers' Service (CSSS). In its meeting held on 21.3.1984, the Governing Body of NWDA decided to adopt the pay scales of Central Water Commission (CWC) for its employees. On acceptance of the report of the 4th Central Pay Commission, the pay scale of the petitioner was revised to Rs.1400-2600 w.e.f. 1.1.1986. Pursuant to an order passed by the Tribunal in OA No. 1538/1987 filed by the Stenographers/Assistants working in the Central Secretariat Stenographers Services (CSSS)/Central Secretariat Services (CSS), a new revised pay scale of Rs.1640-2900 was granted as the revised pay scale in lieu of the old pay scale of Rs.425-800. An OM dated 31.7.1990 was issued by DoP&T in this regard. It was brought to the notice of Department of Personnel & Training (DoP&T) that some autonomous organizations like Indian Council for Agriculture Research had adopted the pay scale of Rs.1640-2900 in respect of their Assistants/Stenographers, who were drawing salary in the pre-revised pay

scale of Rs.425-800, based upon the revision effected in the case of Assistants/Stenographers in CSS/CSSS. An OM dated 11.12.1990 was issued by Ministry of Finance, Department of Expenditure stating therein that revision in the pay scales of Assistants/Stenographers in CSSS/CSS had been made with a view to set right an anomaly in the scales of pay as recommended by the 4th Central Pay Commission and that since the anomaly which was found in respect of the pay-scales of Assistants/Stenographers in CSS/CSSS was not there in the pay scales of Assistants/Stenographers in the autonomous bodies, the instructions contained in Do P&T's OM dated 31.7.1990 were not applicable to the autonomous bodies. All Ministries/Departments of the Government were requested to ensure that the instructions contained in OM dated 31.7.1990 issued by DoP&T were not extended to the autonomous organizations under their administrative control. Consequent to the issuance of OM dated 11.12.1990 pay fixation of the petitioner in the pay scale of Rs.1640-2900 was cancelled.

2. Writ Petition No. 14046/1993 was then filed by the petitioner in the High Court of Judicature, Andhra Pradesh at Hyderabad seeking quashing of the order whereby his pay fixation in the pay scale of Rs.1640-2900 was cancelled. The High Court observed that extension of the application of pay scale of Rs.1640-2900 to the employees of NWDA was not automatic, since the pay scales of NWDA were equated only to those prevailing in CWC and unless the corresponding scale in CWC was enhanced, it was not permissible to unilaterally enhance the pay scales in the NWDA. The High Court was of the view that so long as the pay scales in CWC were at Rs.1400-2600 for Stenographers Grade II, there was no way that the petitioner could have been extended any higher scale of pay. The writ petition was accordingly disposed of upholding the order impugned in the writ petition to the extent of refusing the pay scale of the petitioner to one at Rs.1400-2600 to the petitioner. However, that part of the order which provided for recovery of differential amount was set aside. A review petition was then filed by the petitioner before Andhra Pradesh High Court. The review petition was disposed of on 9.8.2004, with a direction to the respondents to verify whether the benefit of the order passed by the Tribunal in OA No. 1538/1987 was extended to Stenographer Grade II working in CWC and whether the Governing Council of NWDA had passed any resolution extending such benefit to the employees of the same cadre in the NWDA working at the Headquarters of the Director General and Chief Engineers. It was further directed that in case such resolution existed, the case of the petitioner would be considered by extension of the same benefit. Vide order dated 20.10.2005 the respondents passed an order rejecting the claim of the petitioner for extension of pay scale of Rs.1640-2900 to him. Writ Petition No. 2644/2007 was then filed by the petitioner challenging the order dated 20.10.2005 whereby his claim for extension of pay scale of Rs.1640-2900 was rejected by the respondents. The writ petition was transferred to the Tribunal and was registered there as TA No. 163/2007. The TA having been dismissed the petitioner is before us by way of this writ petition.

3. As per Bye-law 26(a) of the Bye-laws of NWDA, the emolument structure i.e. pay scales, allowance and revision thereof, for the employees of NWDA, is required to be adopted with the approval of Government of India in consultation with Ministry of Finance. The Bye-law further provides that approval of the Government of India need not be sought in regard to adoption of scales of pay and allowances identical to those adopted for corresponding posts as per the Central Government orders issued from time to time. It would thus be seen that the Board of NWDA was competent to adopt the pay scales attached to the corresponding posts in the Central Government, in respect of its employees and no prior approval of the Government was required for such adoption. A perusal of the minutes dated 21.3.1984 of the meeting of the Governing Body of NWDA would show that NWDA had adopted the pay scales as applicable in Central Water Commission. There is no dispute with respect to the passing of this resolution. Even the High Court of Andhra Pradesh, while disposing of the writ petition, filed by the petitioner, on 6.1.2003 had specifically observed that the Governing Body of NWDA had adopted the pay scales of CWC. The following quotation from the said judgment is pertinent:

x x The pay scales of pay of NWDA were equated only to those prevailing in CWC. Unless, the corresponding scale in CWC was enhanced, it was just impermissible to unilaterally enhance the pay scales in the NWDA on the basis of the decision of the Central Administrative Tribunal in OA No. 1538 of 1987. There is absolutely no ambiguity in the decision of the Governing Council that the employees of NWDA were entitled for the pay scales prevailing in CWC. As long as the pay scales in the CWC were at Rs.1400-2600 for Stenographers Grade II, there is no way that the petitioner could have been extended any higher scale of pay.

Therefore, the only question to be examined in this petition is as to whether the pay scale of Rs.1640-2900 was applicable in CWC in respect of a post corresponding to the post held by the petitioner in NWDA or not? A perusal of the information obtained by the petitioner from CWC on 13.8.2009 under the Right to Information Act would show that prior to implementation of the recommendations of the 4th Central Pay Commission, the pay scale in respect of the Steno Grade "C" was Rs.425-800, whereas the pay scale in respect of Stenographer Grade II was Rs.425-700. Pursuant to the recommendations of the 4th Central Pay Commission, Stenographers Grade II as well as Stenographers Grade "C" were placed in the revised pay scale of Rs.1400-2600. In the year 1990, on implementation of DoP&T OM dated 31.7.1990 the Stenographers Grade "C" were placed in the pay scale of Rs.1640-2900 which was also the pay scale available to Stenographer Grade "C" in CSSS. No such revision however, was made in the case of Stenographers Grade II in CWC.

4. The next question which arises for our consideration in this case is as to whether the petitioner is to be equated with Stenographer Grade II or Stenographer Grade "C" in CWC? If we go by the nomenclature, the petitioner

being Stenographer Grade II in NWDA would not be entitled to be placed in the pay scale of Rs.1640-2900. The case of the petitioner however is that Stenographers Grade "C" are those stenographers who are directly appointed whereas Stenographers Grade II are those who are promoted. He has pointed out that Stenographer Grade II in CWC were in the pay scale of Rs.425-700 before revision of pay scale pursuant to the recommendation of the 4th Pay Commission, whereas he was placed in the pay scale of Rs.425-800 which was the same scale in which Stenographers Grade "C" in CWC were placed. We do not have enough material before us to verify whether only promotees in CWC are placed in the pay scale of Rs.425-700 or even direct appointees are placed in that pay scale. The crucial aspect in our opinion is that the petitioner on being appointed in NWDA was placed in the pay scale of Rs.425-800 which was the pay scale available to Grade "C" Stenographers in CWC. Therefore, he is entitled to that pay scale which CWC has granted to its stenographers placed in the pre-revised scale of Rs.425-800 irrespective of the nomenclature given to the posts in NWDA and CWC. Since stenographers placed in the pay scale of Rs.425-800 in CWC were placed in the pay scale of Rs.1640-2900, in the year 1990, as is evident from the information supplied to the petitioner under Right to Information Act, and the Governing Body of NWDA has already adopted the pay scales of CWC for its employees, the petitioner was also entitled to be placed in the pay scale of Rs.1640-2900.

5. It is true that Andhra Pradesh High Court had not accepted the claim of the petitioner for the pay scale of Rs.1640-2900. This however was based on the assumption that the Stenographers in CWC were placed in the pay scale of Rs.1400-2600. As a proposition of law, the High Court had taken a view that the pay scale of CWC having been adopted by NWDA, the petitioner was entitled to the pay scale available in respect of a corresponding post in CWC. Since the counterparts of the petitioner in CWC i.e. Stenographers who before revision of pay scales pursuant to the report of 4th Pay Commission were placed in the pay scale of Rs.425-800, have been granted the pay scale of Rs.1640-2900, that pay scale cannot be denied to the petitioner. Shri R.V. Sinha, the learned Counsel for the respondent submitted that subsequent to adoption of the pay scales of CWC by the Governing Body of NWDA, Recruitment Rules for the post of Grade II in NWDA were framed by the Governing Body and the pay scale prescribed in the Recruitment Regulations for the post of Stenographers Grade II was Rs.425-700. In our view, the Recruitment Regulations notified in the year 1985 cannot be applied to the petitioner, who had been appointed in the year 1984, much prior to these recruitment regulations having been adopted, particularly when the recruitment regulations were not framed retrospectively and therefore could not have been applied to the employees who had already been appointed before these regulations were notified. There is neither any averment in the reply of the respondents nor any material on record to indicate that consequent to recruitment regulations having been adopted in the year 1985, the pay scale of the petitioner was lowered from Rs.425-800 to 425-700. Therefore, it is quite

clear that till implementation of the report of the 4th Central Pay Commission, the petitioner continued to draw salary in the pay scale of Rs.425-800. Hence, nothing really turns on the Recruitment Regulations framed by the respondent for the post of Stenographer Grade II in CWC as far as the case of the petitioner is concerned.

6. It is an admitted position that the pay scales in CWC are identical to those in Government of India. Hence, in view of Bye-laws of NWDA, no prior permission of the Government was required to adopt those pay scales.

7. The learned Counsel for the respondent has relied upon Union of India (UOI) and Another Vs. P.V. Hariharan and Another, , S.C. Chandra and Others Vs. State of Jharkhand and Others, , State of Madhya Pradesh and Others Vs. Ramesh Chandra Bajpai, Union of India (UOI) and Others Vs. Hiranmoy Sen and Others, , Steel Authority of India Ltd. and Others Vs. Dibyendu Bhattacharya, and Union of India and Others Vs. Pradip Kumar Dey,

These decisions deal with the concept of "equal pay for equal work" and the scope of intervention by the Courts in such matter. However, the petitioner before this Court is not demanding pay parity, on the principles of "equal pay for equal work". He is only seeking a pay scale, which the respondent has already adopted in respect of their employees, by allowing them those pay scales which are available to CWC employees holding identical position. None of these judgments therefore, helps the respondents, since in the case before us, the pay scales of CWC were validly adopted by NWDA and therefore the petitioner is entitled in law to the pay scales which have been granted to his counterparts in CWC. Since the counterparts of the petitioner would be those Stenographers who, prior to implementation of recommendations of 4th Central Pay Commission, were placed in the pay scale of Rs.425-800, he also is entitled to be placed in the pay scale of Rs.1640-2900 from the date this pay scale was made available to the Stenographer Grade "C" in CWC. For the reasons stated hereinabove, the impugned order dated 25.3.2008 is set aside and the order dated 20.10.2005 issued by the respondents denying pay scale of Rs.1640-2900 to the petitioner is hereby quashed. The respondents shall work out and pay the arrears in terms of this order to the petitioner within four weeks from today.

The writ petition stands disposed of in terms of this order with no order as to costs.